

Recodification of private law from the perspective of the quality of legislation

Abstract:

The key regulation of the recodification of private law is the Civil Code. Legislative work has insisted on it for many years, and as such, it represents a complete, internally interconnected whole. Since its approval in 2012, it has been gradually adopted by the professional and general public alike, yet when we read it, we always find something new in it that we didn't previously notice. This then leads us to various considerations on how to interpret a specific provision, and how to apply it in practice.

The Civil Code is a legally precisely written set of laws, yet it contains certain ambiguities, or even inaccuracies. This thesis deals with proposals for amendments to the Civil Code, submitted to the Chamber of Deputies. There were already a total of thirty-one of these, and six of them have been successful so far. For the individual proposals, the second part of the thesis evaluates the reasons for which the changes are proposed, and also whether these changes are generally necessary, whether they are necessary to achieve the intended goal, whether a change in such a fundamental code as the Civil Code is really necessary, whether the change can be assessed as appropriate, i.e. whether its pros outweigh its cons. Extensive proposals are evaluated only to a limited extent, but one comprehensive proposal is developed in a separate, third part of the thesis. Based on these evaluations, the proposals are included in a clear table. A separate table is reserved for individual changes, which are part of a comprehensive proposal in the previously mentioned third part of the thesis. Some other conclusions are then drawn from the tables. In particular, it appears that changes that are neither necessary nor appropriate are proposed and, in some cases, even adopted. Some reasons for change are more common than others, and some reasons for change indicate a higher probability of accepting the change, or a higher probability of evaluating the change as being appropriate.

The evaluation of individual proposals generalizes the problems that burden both the legislative process and the legislation itself, as well as its addressees. The constant production of new laws and their changes disproportionately burdens all parties. The addressees of the norms must follow the changes, the members of the legal

professions must update their knowledge, and the legislator himself finds himself in a circle, and falls into legislative optimism in an effort to create a perfect regulation. It is often forgotten that, in addition to the quality of laws, their identifiability and easy accessibility are equally important for the addressees of standards.

The constant intervention of the legislator into the laws can also lead to a violation of the division of power, where the courts are not given enough space to interpret the text of the law, and thereby create a cover around it composed of individual court decisions.

The text of the thesis formulates the principle of permanence of legislation, consisting in setting different requirements for changes in laws on the one hand, and for recodifications, and essentially new laws, on the other.

However, better legislative rules cannot replace the responsible approach of the legislator, or the responsible approach of the people themselves. The people should actively oppose the current legislative storm, which they could do, for example, by setting up commissions to protect the permanence and recognisability of basic codes and laws.

In conclusion, the idea is expressed that legal practice will deal with an imperfect law, rather than a law whose form is different each year.

This thesis may also have a practical benefit in the form of the reader's opportunity to become acquainted in one place with proposals for changes to the Civil Code, both successful and unsuccessful. It is also possible to search in the thesis, using the number of the relevant section, and thereby find out whether any change in a specific provision has been proposed or not, and with what result.

Keywords: quality of legislation, legislative optimism, principle of permanence of legislation, civil code, amendment, legislation, recognisability of law, reasons for changes in laws, more precise reason, corrective reason, thought reason, technological reason, political decision, law cover.